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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,484	03/12/2001	Maria Grant	UF-10287R	1233
29847	7590	10/14/2003	EXAMINER	
VAN DYKE & ASSOCIATES, P.A. 7200 LAKE ELLENOR DRIVE, SUITE 252 ORLANDO, FL 32809			RUSSEL, JEFFREY E	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/804,484

Applicant(s)

GRANT, MARIA

Examiner

Jeffrey E. Russel

Art Unit

1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 3-15, 17 and 18.

Claim(s) withdrawn from consideration: _____.

8. ☒ The proposed drawing correction filed on 25 September 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

1. The corrected Figure 3 is approved and overcomes the objection set forth in paragraph 1 of the final Office action.
2. In view of the Decision on petition mailed July 9, 2003, the objection set forth in paragraph 2 of the final Office action is withdrawn. This instant application and provisional application 60/188,483 were copending at the time this application was filed.
3. The proposed amendment after final rejection filed September 25, 2003 will not be entered because the amendment is not in proper format under 37 CFR 1.121(c): the status of each of the claims is not indicated by a parenthetical phrase following the claim number and indicating the status of the claims.


Upon submission of the amendment after final rejection in proper format, the amendment will be entered with the following effect:

All the claims, including amended claim 18, will be deemed to be entitled under 35 U.S.C. 119(e) to the benefit of the filing date of the provisional application 60/188,483, and the Grant et al abstract will be available as prior art against these claims only under 35 U.S.C. 102(a). However, the declaration under 37 CFR 1.131 by Grant filed September 25, 2003 is not sufficient to antedate the Grant et al abstract, and the rejections based upon the Grant et al abstract will be maintained. The declaration is not sufficient to antedate the Grant et al abstract because the declaration does not satisfy the requirements of a declaration under 37 CFR 1.131, e.g., the declaration does not allege that conception or reduction occurred prior to a specific date, and does not provide facts or documentary evidence to support the allegation (see MPEP 715.07), the declaration does not allege that reduction to practice occurred prior to the date of the Grant et al abstract, or alternatively does not show diligence between the time of conception and

reduction to practice where the reduction to practice occurred after the date of the Grant et al abstract (see MPEP 715.07(a)), and the declaration does not contain an allegation that the acts relied upon to establish the date prior to the Grant et al abstract were carried out in this country or in a NAFTA country or in a WTO member country (see MPEP 715.07(c)). The examiner has also considered the Grant declaration as a possible Katz-type declaration (see, e.g., MPEP 715.01(c) under "Co-Authorship", and MPEP 716.10). However, the declaration does not state that the Grant et al abstract is describing Applicant's own work and that the other authors were merely working under Applicant's direction, and/or does not demonstrate that the disclosure of the Grant et al abstract was derived from the Applicant.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (703) 308-3975. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Brenda Brumback can be reached at (703) 306-3220. The fax number for Technology Center 1600 for formal communications is (703) 872-9306; for informal communications such as proposed amendments, the fax number (703) 746-5175 can be used. The telephone number for the Technology Center 1600 receptionist is (703) 308-0196.



Jeffrey E. Russel
Primary Patent Examiner
Art Unit 1654

JRussel
October 9, 2003